IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Criminal R.C. No.2025 of 2002

M.Balasubramani .. Petitioner

Vs.

1 . M/s. Shine Leather Exports
rep. by Gulzar Ahamed
38, Big Mosque Street,
Pernampet, Vellore District.

2. M/s. Shine Leather Exports
rep. by Sadiq Mohamed,
31. Tahir Street,
Pernampet, Vellore District. .. Respondents

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C, against the judgment, dated 18.02.2002, made in C.C.No.262 of 1998 on the file of the Judicial Magistrate, Gudiyattam.

For petitioner : Mr.V.Karthick

For respondents : Mr.Menon & Goklaney Associates for R1
Mr.K.A.Ravindran for R2

O R D E R

This Criminal Revision Petition is filed on behalf of the petitioner / complainant against the judgment, dated 18.02.2002, made in C.C.No.262 of 1998 on the file of the Judicial Magistrate, Gudiyattam, convicting the respondents for the offence under Section 138 of Negotiable Instruments Act and sentencing them to pay a fine of Rs.2,500/- each and in default to undergo one month SI, seeking proportionate punishment and compensation.

2. The brief facts of the case are as follows :

The respondents / A2 and A3 as partners of A1 firm had obtained a loan of Rs.1,44,087/- from the petitioner / complainant and out of which they returned only Rs.64,087/- and for the balance of Rs.80,000/- with interest, two cheques drawn on Canara Bank, Pernampet Branch, bearing Cheque Nos.995357 and 995358, each for a sum of Rs.40,000/- were given to the petitioners on 25.05.1998 by the respondents, when the same were sent

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by the petitioner / complainant for collection through State Bank of India, Pernampet Branch, they were dishonoured and returned with the note "insufficient funds". When the matter was immediately intimated to the respondents / accused by the petitioner / complainant, they requested the petitioner / complainant to present the same during the first week of September 1998. As per the request of the respondents / accused, the petitioner sent the cheques again for collection through the State Bank of India, Prenampet Branch on 14.09.1998, but again the cheques were returned due to insufficient funds. Hence, the petitioner / complainant issued statutory notice through his counsel. Though the legal notice was received by the respondents / accused, they fail to comply with the demand made in the notice. Hence, the petitioner gave a complaint under Section 138 r/w 142 of Negotiable Instruments Act before the Judicial Magistrate, Gudiyattam. After the case was posted for trial, in support of the petitioner's case, apart from examining the petitioner/ complainant, Manager of the Canara Bank, Pernampet Branch and Manager of State Bank of India, Pernampet Branch were examined as P.W.2 and P.W.3. respectively and Exs.P.1 to P.10 were marked. The second respondent / A2 examined himself as D.W.1 and Exs.D.1 and D.2 were marked on the side of the respondents.

3. Considering the oral and documentary evidence, the learned Judicial Magistrate, Gudiyattam held that the guilt against the respondents / accused has been proved under Section 138 of Negotiable Instruments Act and accordingly, the court below has convicted the said accused, but imposed only a fine of Rs.2,500/- each with a default sentence of one month SI, though the value of the two cheques was Rs.80,000/-. Against, which the petitioner/ complainant preferred this Criminal Revision, for proportionate punishment.

4. Learned counsel for the petitioner / complainant submits that the sentence imposed by the court below under Section 138 of Negotiable Instruments Act is inadequate and as such the same is not sustainable. Though the cheques issued by the respondents for a total sum of Rs.80,000/- were dishonoured due to insufficient funds, the court below has imposed only a nominal fine of Rs.2,500/- to each of the respondents, which is contrary to law laid down by the Hon'ble Apex Court. Further, no compensation was awarded in favour of the petitioner / complainant. According to the learned counsel for the petitioner, the court below has not considered the proportionality of the sentence in rendering the impugned judgment. In support of his contention, the learned counsel for the petitioner relied on the following decisions :

1. Suganthi Suresh Kumar vs. Jagdeeshan, 2002 SCC Cri 344.
2. K.P.Chinnasamy vs. T.B.Kennedy, 2007-1-L.W. (Crl) 74.
3. Y.Sreelatha @ Roja vs. Mukanchand Bothra, 2002-1-L.W. (Crl) 271.

5. Per contra, learned counsel for the respondents / accused would contend that the charges levelled against the respondents have not been proved. According to them, the cause of action would commence for filing the complaint on the payee making demand on the drawer by giving notice in

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writing demanding payment on account of the dishonour of the cheque, within 15 days from the date of demand.

6. It has been categorically stated by the petitioner / complainant that he had intimated about the earlier dishonour of the cheques orally and the respondents informed that they would make arrangement and requested to present the cheques during first week of September 1998. Accordingly, in the second time, the cheques were sent for collection through State Bank of India, Pernampet, since the cheques were again dishonoured, the petitioner sent legal notice to the respondents.

7. As contended by the learned counsel for the petitioner, had there been no request from the respondents to present the cheques in the first week of September 1998, there could be no possibility for the petitioner / complainant to send the cheques again through his bank account for collection, instead of taking legal action. The petitioner / complainant has stated the above said facts in his legal notice and the copy of the notice and the postal acknowledgement cards were also marked before the trial court by the petitioner / complainant and also available in the typed set.

8. It is clear that Ex.D.1 would show that the legal notice sent by the petitioner / complainant was duly received by the respondents and in the legal notice at paragraph number 2, it has been clearly stated by the petitioner / complainant that after the dishonour of the cheques, dated 25.05.1998, at the request of the respondents, the petitioner again sent the cheques for collection during the first week of September. Denying the averments, no reply notice was sent by the respondent. The illegible xerox copy marked as Ex.D.2 by the respondents was also disbelieved by the court below. Therefore, I could find no error or infirmity in the finding and conviction rendered by the court below. Further, against the said conviction and sentence, imposing only fine of Rs.2,500/- each, no appeal was preferred by the respondents. Therefore, I am of the considered view that the defence raised by the respondents / accused that the complaint was not filed within 15 days time, will not hold water. The court has to see the conduct of the parties, as per the evidence available on record and the judgment should meet the ends of justice.

9. The Hon'ble Supreme Court of India in the decision, Suganthi Suresh Kumar vs. Jagdeeshan, 2002 SCC Cri 344, has categorically held that the imprisonment till rising of court and imposing fine of Rs.5,000/- on the accused could not be justified under Section 138 of Negotiable Instruments Act, since the amount payable by the dishonoured two cheques in the aforesaid case was in the aforesaid case was over four lakhs. In the said judgement, at page number 349, the Hon'ble Apex Court has ruled as follows :

> " 14. As we propose to remit the case back to the trial court, we do not wish to indicate what exactly should be the limit of proper sentence to be passed. The trial Magistrate shall hear both sides once again

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in the matter of sentence and pass a sentence which is condign. We, therefore, set aside the sentence passed on the respondent and remit the case back to the trial Magistrate for passing appropriate sentence on the respondent after hearing both sides."

10. I am of the considered view that the aforesaid decision rendered by the Hon'ble Supreme Court is squarely applicable for the facts and circumstances of the instant case. In the light of the above decision of the Hon'ble Apex Court, I find it reasonable to remit back the case to the trial Magistrate, who shall hear both sides once again in the matter of sentence and pass appropriate sentence on the respondents, after hearing both sides.

11. The trial court is directed to dispose the matter, within two months from the date of receipt of the copy of this order.

12. With the above direction, this Criminal Revision Petition is disposed of.

tsvn

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, Gudiyattam.

2. -do- Thro' The Chief Judicial Magistrate,
   Vellore.

3. The Section Officer,
   Crl.Section,
   High Court, Madras.

+1 cc to Mr.K.A.Ravindran, Advocate Sr.No.28601.

+1 cc to Mr.T.S.Gopalan & Co., Advocate Sr.No.28592.

+2 ccs to Mr.M/s.Menon, Advocate Sr.No.29388.

VC(CO)
dcp/16.5.07

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